IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1604 OF 2002

The Principal, Wilson College of Arts & Science. ...Petitioner.
Versus
Dr. Ms. Vaishali Dabke & Ors. ...Respondents.

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Mr. R. V. Govinlkar with Mr.Murlidhar Khadilkar for the Petitioner.
Mrs.Madhubala Kajale, AGP for Respondent No.2.

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CORAM : DR. D.Y. CHANDRACHUD, J.

April 13, 2005.

ORAL JUDGMENT:

The Wilson College of Arts and Science, which is in existence for over 150 years has a Department of Sanskrit. The College imparts instruction in Sanskrit amongst other disciplines. The College has stated in these proceedings that it had over the last 50 years, no more than two teachers to take on the function of imparting instruction in Sanskrit. Sanskrit unfortunately does not command the same level of popularity as Computers among young students. Since

April 1944, Professor H. D. Velankar was a Senior Professor in the Sanskrit Department of the College. In June 1952, Dr.Ganesh Hari Godbole was appointed as full time lecturer in Sanskrit. Upon the retirement of Professor Velankar, Professor R.V. Kher was appointed in June 1970 and upon the retirement of Dr. G. H. Godbole, Dr.Uma P. Vaidya was appointed as a full time lecturer on 21st June 1987. Dr. R. V. Kher retired on superannuation on 30th November 1996. The First Respondent was appointed by a letter dated 22nd October 1996 on the full time post of lecturer in the Degree College for teaching Sanskrit in the scale of Rs.2200-4000 with effect from 2nd December 1996. The appointment was on probation for a period of 2 years subject to the First Respondent passing the NET/SET examination. On 17th March 1997, First Respondent was informed that her appointment as a temporary lecturer was due to come to an end on 19th April 1997. On 20th May 1997, the First Respondent was appointed again to the full time post of a lecturer in the degree college to teach Sanskrit on a temporary basis until 20th April 1998. On 5th May 1998, the First Respondent was continued on the same basis

until 20th April 1999. According to the College, the University had granted approval to the appointment of the First Respondent as full time lecturer in Sanskrit on a temporary basis by a letter dated 22nd October 1997 with effect from 2nd December 1996. On 19th November 1998, the University granted its approval to the continuation of the First Respondent again on a temporary basis with effect from 16th June 1997. On 10th December 1999, the First Respondent was informed that approval to her in the post of full time lecturer was not forthcoming from the Education Department and in the circumstances, she will be appointed as a lecturer on clock hour basis from 1st January 2000 till the end of the second term of Academic Year 1999-2000. On 14th February 2000, the First Respondent was informed that the College had as a special case decided to release her salary as full time lecturer until the end of the academic year 1999-2000.

2. The First Respondent moved the College Tribunal in an appeal under Section 59 of the Maharashtra Universities Act, 1994.

The First Respondent was aggrieved by the conduct of the management in informing her that she would henceforth be paid on a clock hour basis. The Presiding Officer of the University and College Tribunal allowed the appeal by an order dated 18th April 2002 and while quashing and setting the said communication of the Principal, directed that the First Respondent be reinstated in the post of full time lecturer with back wages. The order has been impugned in these proceedings under Article 226.

3. There is a Government Resolution dated 17th March 1999 which prescribes norms for minimum enrollment at the entry level as a compulsory condition for continuation of affiliation. The College in the present case, is an aided institution. Sanskrit is offered as a compulsory subject for the first year, as an optional subject at the First Year and the Second Year and as a special or major subject for the Third Year B.A. Degree Examination. Under the Government Resolution dated 1st June 1982, a minimum enrollment of 15 students is prescribed at the entry level in an urban area and of 5 students in a

rural area. Since the College is situated in the present case, within Corporation limits, a minimum 15 students is the requirement at the entry point for continuation of affiliation. An affidavit was filed before the University Tribunal on behalf of the Joint Director of the Higher Education in which it was stated that Government has clarified that the entry point is a point at which the subject is introduced for the first time. In the reply filed by the Joint Director, the enrollment of students in the subject of Sanskrit for the years 1996-97, 1997-98, 1998-99 and 1999-2000 was set out in a chart. The chart shows that the College meets the minimum required enrollment of 15 students in the subject of Sanskrit as a compulsory subject for the First Year B.A., and as an optional subject for the First Year as well as the Second Year. However, there is a short fall in meeting the minimum enrollment in the subject of Sanskrit as a special subject at the Third Year B.A. Level.

4. The Tribunal was in the present case of the view that the norm of 15 students should be enforced at the entry point, that is, at

the time when the subject is to be introduced and shall not be required when the same subject would continue to be taught in the higher classes as a natural growth. The Tribunal noted that it was not the case of the Department or of the College that there was not a sufficient number of students at the entry point in the subject of Sanskrit. The Tribunal held that if there was a subsequent short fall in the enrollment of students, then it was necessary for the College to take steps under Section 439E of the Statutes of the University of Mumbai. Statute 439E is in the following terms :

> "S.439E. A teaching post in a college shall not be abolished or its work-load reduced; unless a proposal in that behalf is approved by the University. In the event of approval of the proposal for abolition of the post by the University, the services of the teacher concerned holding the post may be terminated by giving him one month's notice or in lieu thereof paying him one month's Pay, D.A. And C. L. A. if the teacher is on probation; and three months' notice or in lieu thereof three months Pay, D.A., and C. L. A. if the teacher is confirmed in the post. If the teacher has worked continuously for more than five years from the date of his appointment on probation but less than ten years in a college or colleges managed by the same Governing Body he shall also be paid six months' Pay, D.A. and C. L. A. In case he has worked continuously for ten years or more, he shall be paid twelve months' Pay, D.A. and C. L. A.

> In case the work-load is reduced to half or less than half the teacher concerned, if he so wishes, shall be continued as a part-time teacher and shall be paid in accordance with the Statutes made in that behalf."

In the present case, the view of the Tribunal is that it was not open to the College to unilaterally abolish a teaching post without the approval of the University. The Tribunal held that if there was a default on the part of the College to take necessary steps in accordance with law, the Joint Director of Higher Education may not be liable to release the salary since the continuation of the teacher would be on account of the default on the part of the College. In such a case the Joint Director should certify the time limit for the College to take necessary steps under the Statute 439E and the College would be held to be in default if no such steps were taken within the specified time. This was the view of the Tribunal.

5. Now, in the present case, when the petition came up for admission, no interim relief was granted since the Court was of the

view that there was a breach of Statute 439E since admittedly more than 15 students had taken Sanskrit at the First Year which was stated to be the entry point under a circular of the Government dated 1st June 1982. The circular of the Government dated 1st June 1982, it may be noted, clarified that the norm of 15 students for urban areas and of 5 students in areas outside the limits of Municipal Corporations should be enforced only at the entry point, that is, at the First Year, Second Year and Third Year class of the three year Degree Course at which the subject is to be introduced and should not be insisted upon when the said subject is continued in a higher class as a natural growth. The circular then states that a special/additional/major subject should be treated as an independent subject from a general subject already being taught in the College.

6. At the hearing of the Petition, the Court is informed that at present, the college has two teachers in the subject of Sanskrit. Of the two, Dr.(Mrs) Uma P. Vaidya is presently on deputation to Mumbai University from January 2005. The First Respondent is in the

circumstances, the only teacher who is available for teaching Sanskrit. Having regard to these facts and circumstances, there can be no gainsaying the fact that the services of the First Respondent are in fact, required in order to ensure that the interest of the students who are receiving instruction in the subject of Sanskrit does not suffer. The present case highlights the difficulties which an educational institution which imparts instruction in Sanskrit faces in contemporary times. Institutions such as the Petitioner perform a valuable role in ensuring that studies in classical subjects such as Sanskrit which are an intrinsic part of our heritage and culture continue to subsist and the small band of students genuinely interested in pursuing the quest for learning is not deprived of facilities for receiving education. At the same time, an aided College is required to fulfill the conditions for affiliation. Colleges such as the Petitioner may unfortunately have to close down their Departments of Sanskrit unless the Government takes a pragmatic view of the matter. Closing down such courses on the ground that the enrollment of students is limited to a relatively small number of students is not

either in the interests of education or in the public interest in preserving research and study in Sanskrit. Popular choices cannot monopolise the channelising of resources towards education. Producing good doctors, engineers and software professionals is important but the system cannot only look to generating professionals in these disciplines alone. The preservation of culture must not be ignored in the march towards the modern. Teachers who dedicate their lives in the quest of unravelling the intricacies of Sanskrit are a dedicated, if diminishing band. The government should not look askance at their needs and concerns. The College has emphasised before the Court, the fact that there is no other teacher available to teach Sanskrit in the College except the First Respondent, but it is equally necessary for the Government to take a sympathetic view in the matter by considering such representation as the college would make for releasing the grant in aid for the teacher concerned. The First Respondent has worked for nearly nine years. I am of the view that the Government should look at the matter in an appropriate light having regard to the importance of Sanskrit. Otherwise this will be

one more casualty of modern civilisation.

7. In the circumstances this petition is disposed of by confirming the order of the University Tribunal and with liberty granted to the Petitioner to move the State Government for an appropriate clarification in regard to the norm of 15 students at the entry point in the subject of Sanskrit and for the release of the grant in respect of the salary of the First Respondent as the teacher employed for teaching the said subject. Until the Government arrives at a decision, government shall in terms of the interim directions which were issued by the Court on 2nd July 2002, continue to release the salary of the First Respondent when it falls due. In the event that an adverse decision is arrived at by the Government, the decision shall not be enforced for a period of two months in order to enable the institution as well as the teacher to adopt appropriate proceedings, if they so desire. The Petition is accordingly disposed of. There shall be no order as to costs.

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